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EXAMINER	
LONG, ANDREA NATAE	

ART UNIT	PAPER NUMBER
2176	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/763,701	EYTCHISON ET AL.	
	Examiner	Art Unit	
	Andrea N. Long	2176	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *31 October 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,2,4-14,16-25 and 27-29* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,2,4-14,16-25 and 27-29* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *8/25/08 10/14/08 10/27/08 12/29/08*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

FINAL ACTION

Applicant's Response

In Applicant's Response dated 10/31/2008, Applicant amended claims 1, 12, 13, 23, 27, and 28, and argued against all objections and rejections previously set forth in the Office Action dated 08/11/2008.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 12 and 23-25 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claims 12 and 23 are considered software per se. Computer programs may be explicitly claimed as, for example, a series of code or instructions for performing functions or may be implicitly claimed as, for example, a system, a module or an apparatus. Where there is no evidence in the specification that a means which may be interpreted as software, hardware or combinations thereof necessarily includes hardware, it will be interpreted in its broadest reasonable sense as a software means, which is the case here.

Thus a claim to functional descriptive material, including computer programs, per se, is not patent eligible subject matter. Claims 24 and 25 are rejected as inheriting the deficiencies of claim 23.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-2, 4-14, 16-25 and 27-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Craig Janik (Pub. No US 2002/0013852 A1), hereinafter "Janik" in view of Jason M. Nash (Pub. No 2001/0021994 A1), hereinafter "Nash".

For the convenience of the Applicant, the Examiner has pointed out particular references contained in the prior art(s) of record in the body of this action. Although the specified citations are representations of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. The Applicant should consider the entire reference(s) as applicable as to the limitations of the claims.

As to independent claim 1, Janik teaches a method comprising:

identifying a preference corresponding to a user (page 6 paragraph [0082]);

detecting a current display window (page 5 paragraphs [0075] [0076], page 6 paragraph [0087]);

prefetching at least one audio/visual content in response to the current display window and the preference (Figs. 3,4, page 6 paragraphs [0082] [0094], page 11 paragraph [0167], page 12 paragraph [0184], page 13 paragraphs [0192]-[0193]); and

setting a prefetch parameter for a frequency of prefetching in response to the preference (page 6 paragraph [0105], page 11 paragraph [0165]). Janik does not teach identifying a user pattern corresponding to a user or prefetching content in response to the user pattern.

Nash teaches identifying a user pattern corresponding to a user and retrieving content in response to the user pattern (page 1 paragraph [0004] - presenting information to a viewer which contains material that has been explicitly gleaned from either the viewer's viewing habits).

Both Janik and Nash provided content to a user in response to user selections or monitored users selections to display information that is relevant to a user's viewing for customized viewing.

It would have therefore been obvious to one skilled in the art at the time the invention was made to have included the use pattern of Nash with the teachings of Janik to provide for the display of content that which may be inferred as being of possible interest to the viewer but outside of the normal viewing habits.

As to dependent claim 2, Janik teaches setting a prefetch parameter for a range of display windows in response to the preference (Figs. 5, 7, 9).

As to dependent claim 4, note the discussion above, Janik teaches the method of claim 1. Janik teaches retaining the user' preference information (page 5, paragraph [0080], page 6 paragraph [0082]). However Janik does not explicitly teach identifying the user associated with the preference. Official Notice is taken, that it is old and well known in the art for a user's

preference information to be stored and obtained by identifying the user through a variety of methods, for example, the use of a username and password.

It would have been obvious to one skilled in the art at the time the invention was made than an identification process for retrieving the user's preference would be implemented to eliminate the need for the user to re-enter their preferences for uses at a different time or location.

As to dependent claim 5, Janik teaches wherein the audio/visual content includes one of a document, an image, audio data, and video data (page 1 paragraph [0009]).

As to dependent claim 6, Janik teaches wherein the preference includes viewing habits and selected genres (Fig. 22, page 6 paragraph [0082]).

As to dependent claim 7, Janik teaches wherein the prefetching further comprises transmitting the audio/visual content to a prefetching buffer (page 1 paragraph [0008], page 5 paragraph [0072], page 12 paragraph [0176]). It is well known that a buffer is a region of memory to hold data temporarily until transferred. While Janik teaches the system including memory, he further teaches a Gateway storage peripheral which allows storage of data until the data is transferred, which one skilled in the art would considered equivalent to a buffer.

As to dependent claim 8, Janik teaches wherein the prefetching further comprises updating the audio/visual content based on the current display window (page 11 paragraph [0167]).

As to dependent claim 9, Janik teaches wherein the preference includes a play list (page 8 paragraph [0132]).

As to dependent claim 10, Janik teaches wherein the preference includes a genre selection (Fig. 22, page 6 paragraph [0082]).

As for dependent claim 11, Janik teaches wherein the preference includes a plurality of audio/visual content (Fig. 22, page 6 paragraph [0082]).

As for independent claim 12, Janik teaches an electronic device-implemented system comprising:

means for identifying a preference (page 6 paragraph [0082]);

means for organizing audio/visual content using a parameter (page 5 paragraphs [0076] [0077]);

means for detecting a current display window (page 5 paragraphs [0075] [0076], page 6 paragraph [0087]); and

means for prefetching at least one audio/visual content in response to the current display window and the preference (Figs. 3, 4, page 6 paragraphs [0082] [0094]).

means for setting a prefetch parameter for a frequency of prefetching in response to the preference (page 6 paragraph [0105], page 11 paragraph [0165]). Janik does not teach identifying a user pattern corresponding to a user or prefetching content in response to the user pattern.

Nash teaches identifying a user pattern corresponding to a user and retrieving content in response to the user pattern (page 1 paragraph [0004] - presenting information to a viewer which contains material that has been explicitly gleaned from either the viewer's viewing habits).

Both Janik and Nash provided content to a user in response to user selections or monitored users selections to display information that is relevant to a user's viewing for customized viewing.

It would have therefore been obvious to one skilled in the art at the time the invention was made to have included the use pattern of Nash with the teachings of Janik to provide for the display of content that which may be inferred as being of possible interest to the viewer but outside of the normal viewing habits.

As to independent claim 13, Janik teaches a method comprising:

detecting an activity (page 6 paragraph [0082] → user selecting preferences);

setting a prefetch parameter based on the detected activity (page 6 paragraph [0082]), wherein the prefetch parameter includes a frequency of prefetching (page 6 paragraph [0105], page 11 paragraph [0165]);

detecting a current display window (page 5 paragraphs [0075] [0076], page 6 paragraph [0087]); and

prefetching a content item based on the prefetch parameter and the current display window (Figs. 3, 4, page 6 paragraphs [0082] [0094]). Janik does not teach identifying a user pattern corresponding to a user or prefetching content in response to the user pattern.

Nash teaches identifying a user pattern corresponding to a user and retrieving content in response to the user pattern (page 1 paragraph [0004] - presenting information to a viewer which contains material that has been explicitly gleaned from either the viewer's viewing habits).

Both Janik and Nash provided content to a user in response to user selections or monitored users selections to display information that is relevant to a user's viewing for customized viewing.

It would have therefore been obvious to one skilled in the art at the time the invention was made to have included the use pattern of Nash with the teachings of Janik to provide for the display of content that which may be inferred as being of possible interest to the viewer but outside of the normal viewing habits.

As to dependent claim 14, Janik teaches wherein the prefetch parameter includes a range of display windows (Figs. 5, 7, 9).

As to dependent claim 16, Janik teaches selecting at least one audio/visual content based on a search parameter (page 5 paragraphs [0079]).

As to dependent claim 17, Janik teaches the function of wherein the search parameter is a prefetchcontentlist command (page 6 paragraph [0082]). However, Janik does not label this function as a prefetchcontentlist command. Official Notice is taken that it is old and well known in the art that classes such as in databases, contain commands and are usually named to be descriptive of the function at which it is intended to perform.

It would have been obvious to one skilled in the art at the time the invention was made to have labeled a search parameter prefetchcontentlist to allow for ease for identification if a user or programmer needed to make modifications to the class and its commands.

As to dependent claim 18, Janik teaches the function of wherein the search parameter is a getcontentlist command (page 8 paragraph [0132], page 9 paragraph [0134). However, Janik does not label this function as a getcontentlist command. Official Notice is taken that it is old and well known in the art that classes such as in databases, contain commands and are usually named to be descriptive of the function at which it is intended to perform.

It would have been obvious to one skilled in the art at the time the invention was made to have labeled a search parameter getcontentlist to allow for ease for identification if a user or programmer needed to make modifications to the class and its commands.

As to dependent claim 19, Janik teaches the function of wherein the search parameter is a getcontentbygenre command (page 5 paragraphs [0076] [0077]). However, Janik does not

label this function as a getcontentbygenre command. Official Notice is taken that it is old and well known in the art that classes such as in databases, contain commands and are usually named to be descriptive of the function at which it is intended to perform.

It would have been obvious to one skilled in the art at the time the invention was made to have labeled a search parameter getcontentbygenre to allow for ease for identification if a user or programmer needed to make modifications to the class and its commands.

As to dependent claim 20, Janik teaches a function of wherein the search parameter is a getmediacontainer command (page 5 paragraphs [0076] through [0079]). However, Janik does not label this function as a getmediacontainer command. Official Notice is taken that it is old and well known in the art that classes such as in databases, contain commands and are usually named to be descriptive of the function at which it is intended to perform.

It would have been obvious to one skilled in the art at the time the invention was made to have labeled a search parameter getmediacontainer to allow for ease for identification if a user or programmer needed to make modifications to the class and its commands.

As to dependent claim 21, Janik teaches updating the prefetch parameter based on an additional activity (page 11 paragraphs [0165]).

As to dependent claim 22, Janik teaches prefetching at least one additional audio/visual content based on a changing current display window (page 11 paragraph [0167]).

As to independent claim 23, Janik teaches an electronic device-implemented system comprising:

a media container configured for storing an audio/visual content item ("Internet", Fig. 1 reference characters 8 and 10);

a prefetch buffer configured for temporarily storing a prefetched audio/visual content item (page 1 paragraph [0008], page 5 paragraph [0072], page 12 paragraph [0176]). It is well known that a buffer is a region of memory to hold data temporarily until transferred. While Janik teaches the system including memory, he further teaches a Gateway storage peripheral which allows storage of data until the data is transferred, which one skilled in the art would considered equivalent to a buffer.

and

a presentation layer configured for transmitting the prefetched audio/visual content item to the prefetch buffer based on a user's preference and a current display window (page 3 paragraph [0027], page 5 paragraphs [0076] [0080], page 6 paragraph [0082]), wherein the presentation layer transmits the prefetched audio/visual content item based on a preset frequency of prefetching (page 6 paragraph [0105], page 11 paragraph [0165]). Janik does not teach identifying a user pattern corresponding to a user or prefetching content in response to the user pattern.

Nash teaches identifying a user pattern corresponding to a user and retrieving content in response to the user pattern (page 1 paragraph [0004] - presenting information to a viewer which contains material that has been explicitly gleaned from either the viewer's viewing habits).

Both Janik and Nash provided content to a user in response to user selections or monitored users selections to display information that is relevant to a user's viewing for customized viewing.

It would have therefore been obvious to one skilled in the art at the time the invention was made to have included the use pattern of Nash with the teachings of Janik to provide for the display of content that which may be inferred as being of possible interest to the viewer but outside of the normal viewing habits.

As to dependent claim 24, Janik teaches an application configured to utilize the prefetched audio/visual content (page 6 paragraph [0084]).

As to dependent claim 25, Janik teaches wherein the presentation layer transmits the prefetched audio/visual item content based on a preset range of display windows (page 1 paragraph [0008], page 12 paragraph [0176]).

As to independent claim 27, Janik teaches a method comprising:

detecting an activity (page 6 paragraph [0082] → user selecting preferences);

setting a prefetch parameter based on the detected activity (page 6 paragraph [0082]), wherein the prefetch parameter includes a frequency of prefetching (page 6 paragraph [0105], page 11 paragraph [0165]);

detecting a current display window (page 5 paragraphs [0075] [0076], page 6 paragraph [0087]); and

prefetching a content item based on the prefetch parameter and the current display window at any time and in response to the detected activity (Figs. 3,4, page 6 paragraphs [0082] [0094]). Janik does not teach identifying a user pattern corresponding to a user or prefetching content in response to the user pattern.

Nash teaches identifying a user pattern corresponding to a user and retrieving content in response to the user pattern (page 1 paragraph [0004] - presenting information to a viewer which contains material that has been explicitly gleaned from either the viewer's viewing habits).

Both Janik and Nash provided content to a user in response to user selections or monitored users selections to display information that is relevant to a user's viewing for customized viewing.

It would have therefore been obvious to one skilled in the art at the time the invention was made to have included the use pattern of Nash with the teachings of Janik to provide for the display of content that which may be inferred as being of possible interest to the viewer but outside of the normal viewing habits.

As to dependent claim 28, note the discussion of claim 1, Janik teaches organizing audio/visual content. Janik does not explicitly teach organizing the content according to the use pattern of the user. Nash teaches organizing the content according to the use pattern of the user (page 1 paragraph [0040].

It would have been obvious to one skilled in the art at the time the invention was made to have combined the references to organize content that a user does not have to explicitly select.

As to dependent claim 29, Janik teaches storing information based on a user's preference for quick access (page 3 paragraph [0027]. However Janik does not teach where the content stored is content utilized more frequently. Nash teaches organizing the content according to the use pattern of the user (page 1 paragraph [0040].

It would have been obvious to one skilled in the art at the time the invention was made to have combined the references to organize and quickly access content that a user does not have to explicitly select.

Response to Arguments

Applicant's arguments with respect to claim 1 has been considered but are moot in view of the new ground(s) of rejection. However, the examiner will address arguments that pertain to the teachings of Janik.

In regards to independent claims 1, 12, 13, and 23, the basis of the Applicant's arguments asserts that Janik does not teach, "detecting an activity" or "setting a prefetch parameter based on the detected activity.

The Examiner respectfully disagrees.

Janik teaches prefetching the user is able to create a preference of content by checking boxes beside content types that they wish to receive, which in returns displays content that is related to the users selections. Janik teaches prefetching a content item based on a prefetch

parameter. The detecting is taught by the system recognizing selections by the user for filtering information. As previously stated the user is able to select content preference, which filters for content that is wanted by the user for viewing, which constitutes parameters. Janik also teaches where content can be accessed, cached, and streamed from the internet at times prescribed by the user. Further Fig. 22 exemplifies a web page (current display window), which receives the preference information for processing of the users preferred content. Only content that has been selected by the user through the user interface which was detected by the system will be retrieved. It should be noted that the term "prefetch" is interpreted as obtaining information in advance for future use. Janik provides multiple examples of obtaining information in advance (page 11 paragraph [0167], page 12 paragraph [0184], page 13 paragraphs [0192]-[0193]) for future use. Additionally Janik teaches that content from the Internet or otherwise digital content is accessed and cached locally in a server in the home or enterprise, so that wide area network bandwidth is optimized. The cached content is sent to thin client devices via a LAN communication link that is much faster than the wide area link, resulting in rich media experiences for the end user. The caching based on the preference based content.

It is also noted that the newly applied reference of Nash also teaches detecting an activity. Nash teach that content is selected based on monitoring of a user's viewing habits, therefore the detected activity is the user selection of content to be viewed.

For the reasons of Janik teaching the limitations of independent claims 1, 12, 13, and 23, the dependent claims therefore are also rejected under the teaches of Janik.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea N. Long whose telephone number is 571-270-1055. The examiner can normally be reached on Mon - Thurs 6:00 am to 3:00 pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Doug Hutton can be reached on 571-272-4137. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Andrea N Long/
Examiner, Art Unit 2176

/Rachna S Desai/
Primary Examiner, Art Unit 2176